

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of

Deployment of Wireline Services Offering  
Advanced Telecommunications Services

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CC Docket No. 98-147

**REPLY COMMENTS  
ON THE INITIAL REGULATORY FLEXIBILITY ANALYSIS,  
AND NOTICE OF PROPOSED RULEMAKING,  
OF THE OFFICE OF ADVOCACY  
UNITED STATES SMALL BUSINESS ADMINISTRATION**

The Office of Advocacy of the United States Small Business Administration ("Advocacy") submits these Reply Comments on the Federal Communications Commission's ("FCC" or "Commission") *Memorandum Opinion and Order and Notice of Proposed Rulemaking* ("NPRM"),<sup>1</sup> in the above-captioned proceeding. Congress established the Office of Advocacy in 1976 by Pub. L. No. 94-305<sup>2</sup> to represent the views and interests of small business within the Federal government. Its statutory duties include serving as a focal point for concerns regarding the government's policies as they affect small business, developing proposals for changes in Federal agencies' policies, and communicating these proposals to the agencies.<sup>3</sup> Advocacy also has a statutory duty to monitor and report on the Commission's compliance with the Regulatory

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<sup>1</sup> *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability, Memorandum Opinion and Order, and Notice of Proposed Rulemaking*, CC Docket No. 98-147, FCC 98-188 (rel. Aug. 7, 1998).

<sup>2</sup> Codified as amended at 15 U.S.C. §§ 634 a-g, 637.

<sup>3</sup> 15 U.S.C. § 634c(1)-(4).

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Flexibility Act of 1980 (“RFA”),<sup>4</sup> as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Subtitle II of the Contract with America Advancement Act.<sup>5</sup>

**I. The Commission Must Consider Regulatory Impact On All Classes Of Competitive Local Exchange Carriers In The Initial Regulatory Flexibility Analysis.**

The Initial Regulatory Flexibility Analysis (“IRFA”) must identify all of the classes of small entities affected by the proceeding.<sup>6</sup> To the Commission’s credit, it identified small competitive local exchange carriers (“CLECs”) in the IRFA as a type of small entity affected by the proposed regulations and provided an analysis for small CLECs.<sup>7</sup> However, small CLECs vary greatly in their means of entry into the local market, and therefore the proposed regulations will affect each class differently. Advocacy believes the Commission should tailor its analysis to consider the economic impact on each class of small CLECs and consider alternatives to minimize the economic impact accordingly.

In its initial implementation of the local competition provisions of the Telecommunications Act of 1996,<sup>8</sup> the Commission identified three new paths of entry into the local market: construction of new networks, the use of unbundled elements of the incumbent’s network, and resale.<sup>9</sup> Accordingly, three classes of CLECs have evolved: (1) facilities-based competitive

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<sup>4</sup> Pub. L. No. 96-354, 94 Stat. 1164 (1980)(codified at 5 U.S.C. § 601 et seq.).

<sup>5</sup> Pub. L. No. 104-121, 110 Stat. 857 (1996)(codified at 5 U.S.C. § 612(a)).

<sup>6</sup> 5 U.S.C. §§ 603(b)(3), 603(b)(4).

<sup>7</sup> Although the Commission correctly identified CLECs as small entities affected by the proposed regulations, Advocacy questions the completeness of the IRFA attached to the NPRM. Advocacy’s initial comments in this proceeding detail Advocacy’s precise concerns and describes how the IRFA failed to meet the statutory requirements.

<sup>8</sup> 47 U.S.C. § 251.

<sup>9</sup> *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report*

carriers, (2) unbundled network elements (“UNE”) competitive carriers, and (3) resellers.

Advocacy believes that a complete and thorough analysis of regulatory impact as required by the RFA necessitates an analysis of each class of CLECs.

All three classes of CLECs are important to bring competition to the local loop, but each class uses a different means to promote competition. Accordingly, the three classes have different characteristics, and regulations will affect each class differently. A CLEC, which has constructed an independent network, will not be concerned about a regulation that only affects resale, while the same regulation might cripple a reseller’s capability to compete. With this in mind, the Commission should revisit the conclusions made in its IRFA and analyze the economic impact as it applies to each of the three classes of CLECs.

To adequately consider the disparate impact on each class of CLECs, Advocacy recommends that the Commission address the issues raised by CLECs in their comments. Particularly, Advocacy found the comments by GST Telecom, Inc., Telecommunications Resellers Associations (“TRA”), the Competitive Telecommunications Association (“CompTel”), and the Association for Local Telecommunications Services (“ALTS”) to be indicative of the needs and concerns of the various classes of small CLECs. These comments detail the economic impact of the proposed regulations on small CLECs and address the FCC’s proposed separate affiliate requirements at length. As part of its regulatory flexibility analysis, the Commission should consider the insights into the economic impact of the NPRM provided by these comments.

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*and Order*, 11 FCC Rcd. 15499, para. 12 (1996).

## **II. The Commission Must Consider Alternatives That Minimize Significant Economic Impact On All Three Classes Of Competitive Local Exchange Carriers.**

Advocacy requests that the Commission also consider the four significant alternatives laid out by Congress in the RFA to minimize any significant economic impact to the three classes of CLECs: (1) differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance or reporting requirements for small entities; (3) use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>10</sup> The Commission should bear in mind that different alternatives might be appropriate to the different classes of CLECs.

Relying only the portions of the NPRM that benefited CLECs, the Commission tentatively concluded “our proposals in the NPRM would impose minimum burdens on small entities.”<sup>11</sup> Advocacy believes that the Commission should reconsider this evaluation of the economic impact of all proposed regulations in light of the comments filed by ALTS, GST, and TRA. These comments make clear that the burden of the proposed regulations would not be minimal. The separate affiliate proposal imposes a burden on each class of CLECs uniquely. For example in its comments, ALTS warns the Commission that an incumbent and its separate affiliate could act together to enact a price squeeze, harming facilities-based competitors.<sup>12</sup> GST Telecom, Inc. contends that an incumbent can still unfairly pass benefits to the separate affiliate under the

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<sup>10</sup> 5 U.S.C. § 603(c)(1)-(4).

<sup>11</sup> *NPRM*, para. 226.

<sup>12</sup> Comments of ALTS, to the *Notice of Proposed Rulemaking* in CC Dkt. No. 98-147 at 35 (Sept. 25, 1998).

proposed rules while denying those same benefits to UNE competitors.<sup>13</sup> TRA comments that the separate affiliate proposal effectively would deny resellers the opportunity to resell advanced telecommunications services at wholesale rates, which would place them at a competitive disadvantage.<sup>14</sup> The Commission should reconsider the economic impact for each of the classes of small CLECs, it should then consider alternatives as outlined by Congress in the RFA.

### **III. Conclusion.**

In summary, the Office of Advocacy believes that CLECs can be divided into three distinct classes: (1) facilities-based competitive carriers, (2) UNE competitive carriers, and (3) resellers. Although the three classes fall under the broad umbrella of competitive local exchange carriers, each of these classes has distinct characteristics that differentiate it from the other classes of CLECs. Furthermore, each class of CLEC will react differently to regulation resulting in different levels of economic impact.

In addition to identifying properly small incumbent local exchange carriers ("ILECs") and information service providers ("ISPs") as small entities affected by the proposed rules,<sup>15</sup> Advocacy recommends that the Commission: (1) identify and undertake an analysis of all classes of small CLECs affected by the proposed regulations and (2) consider alternatives to minimize any significant economic burdens the proposed regulations would place on the different classes of small CLECs, as part of the Commission's regulatory flexibility analysis. While considering the

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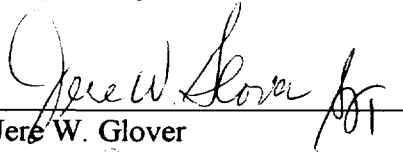
<sup>13</sup> Comments of GST Telecom, Inc., to the *Notice of Proposed Rulemaking* in CC Dkt. No. 98-147 at 13 (Sept. 25, 1998).

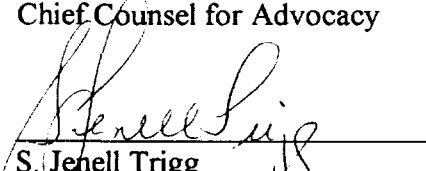
<sup>14</sup> Comments of TRA, to the *Notice of Proposed Rulemaking* in CC Dkt. No. 98-147 at 9 (Sept. 25, 1998).

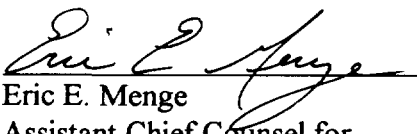
<sup>15</sup> See Comments of the Office of Advocacy, U.S. Small Business Administration, to the *Initial Regulatory Flexibility Analysis, Notice of Proposed Rulemaking, and Memorandum Poinion and Order* in CC Dkt. No. 98-147 (Sept. 25, 1998).

economic impact on small entities, the Commission must keep in mind that the proposed rules affect different classes of small entities – ISPs, the three classes of CLECs, and ILECs – which will differ on the issues and have conflicting interests. The Commission must balance these interests, after a complete detailed analysis of the impact that the proposed rules will have on each class of small entities. This analysis should be included in a revised IRFA which can be submitted for public notice and comment as Advocacy recommended in its initial comments.

Respectfully submitted,

  
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